

Although the donee of a gift is not a taxable user, the donor who purchases the property and gives it away in Illinois makes a taxable use of the property when making such gift. See 86 Ill. Adm. Code 150.305(c). (This is a GIL.)

December 30, 2005

Dear Xxxxx:

This letter is in response to your letter dated February 16, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am working at a company that manufactures/sells motor vehicles in your state under a 'Motor Sales Corporation'. They also have a 'Financial Services Corporation' which finances the vehicles when they are purchased. The two Corporations have accounting and disbursement performed by the 'motor sales corp.' under a Shared Services Agreement. Disbursements for suppliers and taxes both companies are paid from the 'motor sales' disbursement center.

When a customer leases or finances a vehicle at the same time, the 'Financial Services Corporation' sends notice to their 'Print Vendor' who prepares and delivers a small catalog of items and related printed materials like a 'Welcome Pack' to the specified customers called 'Beginning of Term (BOT) Materials'. The BOT printed materials thank the customer for his business and the customer can select a gift. The gift is provided only to purchasers that finance or lease through 'financial services corporation.

Upon selecting a gift from the free catalog for the BOT materials, the customer returns the order to the fulfillment house and the fulfillment house sends the gift directly to the customers. The fulfillment company bills the 'financial services' corporation for the product.

Currently the fulfillment house is charging sales taxes on the gift that we believe to be part of a for retail transaction.

We would like a determination if the BOT materials such as the catalogs, the welcome packs and gifts are considered for 'resale' transactions and nontaxable as the customer does not get the Welcome packs and free gift unless they purchase and finance the vehicle at the same time.

During the customer's lease/purchase: the 'Financial Services Corporation' sends its customers a second type of gift or discount allowance card for products or services which gives them dollars off if they purchase any products or services from dealerships. These items are called 'Middle of Term' (MOT) printed materials. They advertise the products and services for sale at the dealerships. The Print Vendor prints up the gift cards and charges sales taxes on the print charges.

At the end of the lease/purchase term: the 'Financial Services Corporation' sends its customers 'End of Term' (EOT) materials. The EOT materials also includes a second type of gift or promotional discount card which entitles the customers to dollars off any products or services.

Also, the customer gets flyers saying they are 'pre-approved' or 'pre-qualified' for a loan or lease on a new car. We would like a determination on these EOT materials such as the charge for printing up the gift cards as well as the flyers on whether these are 'printed sales messages' as they promote products and services for sale and are delivered free to the customers.

With respect to the second type of gift cards, the dealership collects and remits sales taxes from the customer on the items for which the gift/discount cards are redeemed at the time of purchase.

We would like a determination on whether these middle of term materials and end of term materials are 'printed sales messages' as they promote products and services for sale and are sent free to the customers by a third party fulfillment house.

Please send your reply to NAME/ADDRESS

DEPARTMENT'S RESPONSE

In regard to the BOT, MOT, and EOT materials, free gifts, and discount cards sent to customers who finance or lease:

We cannot tell whether these items are really part of the sale that the customer pays for or are actually free to the customer. You have indicated that these items are given away free.

The Use Tax is a tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. The Use Tax is paid to Illinois retailers registered to collect Use Tax. If the Use Tax is not paid to an Illinois registered retailer, the purchaser must self-assess the Use Tax at the rate of 6.25% and remit it to the Department.

"Use" means the exercise in Illinois by any person of any right or power over tangible personal property incident to the ownership of that property. The Department's regulation at 86 Ill. Adm. Code 150.305(c) provides that in a gift situation, although the donee of the gift is not a taxable user, the donor who purchases the property and gives it away in Illinois makes a taxable use of the property when making such gift.

In addition, the Use Tax Act provides that in order to prevent actual or likely multi-state taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310. In addition, depreciation is allowed for out-of-State use. See 86 Ill. Adm. Code 150.110.

In regard to the use of the discount cards by customers:

The Department's rules at 86 Ill. Adm. Code 130.2125 explain the taxability of discount coupons and certificates. The principles set out in Section 130.2125(b) apply to discounts irrespective of whether a piece of paper denominated as a coupon or certificate is presented and these principles should be read in conjunction with 86 Ill. Adm. Code 130.420(c). When a retailer allows a purchaser a discount from the selling price for which the retailer receives no reimbursement from any source, the amount of such discount is not subject to tax. The amount received by the retailer in such a transaction, which is lower than the normal selling price, would be the retailer's taxable gross receipts for that sale. If the retailer is reimbursed by any source for a discount from the normal selling price, those receipts are subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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